

MINUTES
BOARD OF ADJUSTMENT
PUBLIC HEARING
JANUARY 12, 2006

The Lake County Board of Adjustment met Thursday, January 12, 2006 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

Board Members Present:

Howard (Bob) Fox, Jr.
Darren Eslinger
Henry Wolsmann, Vice Chairman
Ruth Gray
Mary Link Bennett
Donald Schreiner, Chairman
Carl Ludecke

Staff Present:

Terrie Diesbourg, Director, Customer Services Division
Anita Greiner, Senior Planner, Customer Services Division
Anna Ely, Public Hearing Coordinator, Customer Services Division
Sherie Ross, Public Hearing Coordinator, Planning and Development Services Division
Kevin McBride, Assistant County Attorney

Chairman Schreiner called the meeting to order at 1:00 p.m. He stated for the record that there was a quorum present. He noted the Proof of Publication for each case that was shown on the monitor.

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Minutes

MOTION by Mary Link Bennett, SECONDED by Ruth Gray to approve the December 8, 2005 Board of Adjustment Public Hearing minutes, as submitted.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

Chairman Schreiner noted that all letters, petitions, photographs, and other materials presented at this meeting by applicants and those in support or opposition must be submitted to staff prior to proceeding to the next case.

Withdrawals

In response to Chairman Schreiner, Anita Greiner, Senior Planner, stated that the following cases have been withdrawn:

BOA#123-05-3	Pete Benevides/Steven J. Richey, PA
BOA#105-05-3	Elizabeth Lee Wilkinson/Sundee Jay

MOTION by Ruth Gray, SECONDED by Mary Link Bennett to accept the withdrawal of BOA#123-05-3 and BOA#105-05-3.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

CASE NO.: BOA#122-05-3
OWNER: Pete Benevides
APPLICANT: Steven J. Richey, PA

AGENDA NO.: 3

CASE NO.: BOA#1-06-2
OWNER: Jerry L. and Deborah S. Jacobs
APPLICANT: Nextel South Corporation

AGENDA NO.: 7

Anita Greiner, Senior Planner, stated that a continuance has been requested for BOA#122-05-3 until the February 9, 2006 Board of Adjustment public hearing and for BOA#1-06-2 until the March 9, 2006 Board of Adjustment public hearing.

MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve the continuance request for BOA#122-05-3 until the February 9, 2006 Board of Adjustment public hearing and for BOA#1-06-2 until the March 9, 2006 Board of Adjustment public hearing.

There was no opposition in the audience to the continuance request for BOA#122-05-3, but there was a gentleman in the audience who wished to speak on the continuance request for BOA#1-06-2.

Ruth Gray questioned whether Nextel had tried to contact the adjacent property owners. Ms. Greiner stated that staff had notified all property owners within 300 feet and those in opposition that this case was to be heard on January 12 as well as notifying them of the requested continuance. Darren Eslinger was informed by Ms. Greiner that there was no posting for the continuance, but a letter was sent. In response to Ms. Gray, Ms. Greiner said no letter was sent to adjacent property owners for BOA#122-05-3 because the site was not posted. In addition, Kevin McBride, Assistant County Attorney, pointed out that a letter was received from Nextel regarding this case wherein they stated that Mr. Jacobs is in the hospital and would not be able to attend this public hearing.

Neil Snyder, adjacent property owner, said he was not aware that Mr. Jacobs was in the hospital. The letter the property owners received stated that the continuance was requested due to the fact that Nextel wanted to contact the neighbors to resolve concerns. Mr. Snyder said he has personally called Nextel three or four times, and he could get no information from them. He was told to go to this public hearing. He did not feel that delaying the meeting today would change the outcome or the staff's recommendation.

Ms. Gray asked when the letter about the postponement request was sent to the property owners. Ms. Greiner said it was sent out immediately after they received it.

FOR: Fox, Eslinger, Gray, Bennett, Schreiner, Ludecke

AGAINST: Wolsmann

MOTION CARRIED: 6-1

Discussion of Consent Agenda

Chairman Schreiner explained the procedure for hearing cases on the consent agenda.

There was no one on the Board nor anyone in the audience who had an objection to the following cases remaining on the consent agenda: BOA#128-05-1, BOA#139-05-1, BOA#4-06-5, BOA#5-06-4, and BOA#7-06-3.

Earl Williams asked that BOA#44-05-5 be removed from the consent agenda and added to the regular agenda. Darren Eslinger asked that BOA#2-06-4 be removed from the consent agenda and placed on the regular agenda, and Ruth Gray asked that BOA#6-06-2 be removed from the consent agenda and placed on the regular agenda.

CASE NO.:	BOA#128-05-1	AGENDA NO.:	4
OWNERS:	Rudy Reiher and Keith Whitmore		
APPLICANT:	Ronald C. Davis		
CASE NO.:	BOA#139-05-1	AGENDA NO.:	6
OWNERS:	Timothy J. and Robin L. Green		
APPLICANT:	Bruce G. Duncan		
CASE NO.:	BOA#4-06-5	AGENDA NO.:	11
OWNERS/APPLICANTS:	Danny L. and Geraldine Kerr		
CASE NO.:	BOA#5-06-4	AGENDA NO.:	12
OWNERS;	Ernest and Margaret Quinton		
APPLICANT:	Veronica Ronni Caggiano		
CASE NO.:	BOA#7-06-3	AGENDA NO.:	14
OWNER/APPLICANT:	John W. Cottrell		

MOTION by Henry Wolsmann, SECONDED by Mary Link Bennett to take the following actions on the above consent agenda:

BOA#128-05-1	Approval with conditions
BOA#139-05-1	Approval with conditions
BOA#4-06-5	Approval
BOA#5-06-4	Approval with one condition
BOA#7-06-3	Approval

FOR: **Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

AGAINST: **None**

MOTION CARRIED: **7-0**

CASE NO.:

BOA#44-05-5

AGENDA NO.:

1

OWNERS/APPLICANTS:

**Kennon L. Hawkins and Jennifer S.
Faulkner**

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with one condition. She showed the aerial from the staff report on the monitor. She explained that the owners/applicants were approved for a family density exception in the past, but they were not able to go through the process in a timely manner in order to get financing for their home (one-year). Last year they came back for an extension so they could have more time to build their house. The extension was granted until January of 2006. Since that time they have hired a contractor who was not able to complete their residence for them, and they cannot find him. They are now in the process of taking over the construction as owner/builder and are asking for another extension to finish the single-family residence. It is currently at the rough plumbing stage.

When Carl Ludecke asked if Ms. Greiner felt this was the truth, she said the Board could talk to the owners. What she presented is what was submitted as their hardship. In response to Mr. Ludecke, Ms. Greiner said the owners presented no proof that the contractor had disappeared.

Kennon Hawkins and Jennifer Faulkner were present to represent the case. Ms. Faulkner submitted a Contractor Complaint Form and other abandonment papers as Applicant Exhibit A.

In response to Mary Link Bennett, Ms. Faulkner said they have not hired an attorney.

Mr. Ludecke was informed by Ms. Faulkner that their contractor was State-licensed. In response to Mr. Ludecke, Ms. Faulkner said they have paid \$2,000 out-of-pocket to pay off a subcontractor who was going to put a lien on their property. They do not think they will get that money back so they will barely have the money to finish the house. Mr. Ludecke said it may be possible to get up to \$25,000 from the State for any losses the owners may incur in order to finish the house if this contractor was State-licensed. They would need to file a judgment against the contractor. Mr. Ludecke was informed by Mr. Hawkins that the house has 1,603 square feet of living area and 2,252 total square feet. Mr. Ludecke said they should be able to finish the house in six months.

Earl Williams said the owners had received a variance several months ago, but he was never notified. He got a notice for this variance. Ms. Greiner said letters are sent to everyone who owns property within 300 feet, but they are not sent certified so staff would have no way of knowing whether Mr. Williams received his letter.

In response to Mr. Ludecke, Ms. Greiner said signs were posted for both variances, one on the property and one at the nearest intersection with a County-maintained road. She added that property owners are notified of upcoming variances in several ways: letters are sent to property owners within 300 feet, two signs are posted, and an advertisement is published in the newspaper. Kevin McBride, Assistant County Attorney, noted that Mr. Williams had also indicated that he had seen the previous signs, which would indicate that he was properly noticed.

MOTION by Darren Eslinger, SECONDED by Mary Link Bennett to approve the variance request in BOA#44-05-5 to allow an extension of the time requirement to complete a family density exception with the condition that a final inspection and certificate of occupancy must be obtained within six months of January 12, 2006.

FOR:

Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST:

None**MOTION CARRIED: 7-0**

CASE NO.:

BOA#137-05-5

AGENDA NO.:

5

OWNERS/APPLICANTS:

Ronald L. and Nancy L. Smith

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial from the staff report on the monitor and submitted a survey as County Exhibit A. She noted that two letters of opposition had been received, but one letter was withdrawn. She submitted the letter of opposition as well as a map (County Exhibit B) showing the location of the property owned by the writer of the letter of opposition.

Regarding the two letters of opposition, Nancy Smith said the two letters were referring to another shed three houses down from the subject property. That property is zoned for a ten-foot setback. It is a one-acre lot. They are requesting a ten-foot setback basically for aesthetic reasons. Their house has a 25-foot setback. Sunrise ARC home, which is located behind their property, has a bright security light. If the shed is set back an additional 15 feet, it would help block the light from coming into their bedroom window.

When Ruth Gray asked how she knew that the writers of the letters of opposition were referring to another corner, Ms. Smith said the writers specifically referred to Thrill Hill Road and CR 44A. Their house is not on CR 44A at all. Ms. Greiner added that the applicant's property is not near the intersection. That is where the variance sign was posted because that was the closest intersection. At the request of Ms. Gray, Ms. Greiner used a map (County Exhibit C) to point out the intersection of CR 44A and Thrill Hill Road and the location of the applicants' property.

Carl Ludecke questioned why the required setback cannot be adhered to when this property is 600 feet deep. A vegetative buffer can be planted to hide the shed if the problem is aesthetics. He did not feel there is a need for this variance.

Ms. Smith said no neighbors object to this request. The shed would look nicer from the house at the requested location.

MOTION by Carl Ludecke, SECONDED by Ruth Gray to deny the variance request in BOA#137-05-5.

FOR:

Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST:

None

MOTION CARRIED: 7-0

CASE NO.: BOA#2-06-4**AGENDA NO.: 8****OWNERS: Mark T. and Kathleen Y. Draper**
APPLICANT: Nextel South Corporation

Carl Ludecke stated that he will be abstaining from voting on this case and will submit a conflict of interest form.

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She showed the aerial from the staff report on the monitor. She submitted a site plan as County Exhibit A. In order to place the proposed tower on this property, the applicant will be required to rezone this property to CFD or request a Conditional Use Permit (CUP) on this property. The applicant has chosen to request a CUP.

Ms. Greiner submitted a wetland map as County Exhibit B and a flood map as County Exhibit C. Henry Wolsmann confirmed that the buildings are not in the wetland area. Ms. Greiner submitted four pictures as County Exhibit D.

Darren Eslinger asked how close the tower would be placed to the transmission poles. Ms. Greiner said it appears to be about 115 to 120 feet away. Mary Link Bennett asked the distance from the proposed tower to the road. Ms. Greiner replied that Lake Lincoln Lane dead-ends into the driveway of the property. Ms. Eslinger confirmed that the tower would be clearly out of the utility easement.

Jim Huff, Site Acquisition Specialist for Craig & Associates, was present to represent the case. Staff had no questions for Mr. Huff.

Hugh Kent, property owner directly across Lake Lincoln Lane from the subject property, questioned why Nextel was not negotiating to share space on an existing tower. He noted that according to staff, this tower will be the same height as the power poles. However, one of the pictures in County Exhibit D shows the power poles to be 80 feet. Based on the Federal Aviation Authority's (FAA) determination that marking and lighting are not required for this tower, if this variance is granted, he asked that a condition be added that the tower not be lighted. Ms. Greiner said the picture in Applicant Exhibit D shows the poles to be 80+ feet, but the birth certificate on the pole showed 120 feet.

MOTION by Henry Wolsmann to deny BOA#2-06-4. Motion died for lack of a second.

MOTION by Ruth Gray to approve BOA#2-06-4. Motion died for lack of a second.

According to the staff report, Mr. Eslinger said there are properties in the area where this tower could be located without a variance.

MOTION by Henry Wolsmann, SECONDED by Bob Fox to deny the variance request in BOA#2-06-4.

In response to Mr. Eslinger, Mr. Huff said no light would be required on this tower.

FOR: Fox, Wolsmann, Bennett, Schreiner

AGAINST: Eslinger, Gray

ABSTAINED: Ludecke

MOTION CARRIED: 4-2

When Mr. McBride asked the reasons for the denial, Mr. Wolsmann said he had made the motion for denial based on the location of the pole. It is not in the area where it was recommended to be. Donald Schreiner confirmed that Mr. Wolsmann felt the pole could be located at a different location on the property. Mr.

CASE NO.: BOA#2-06-4

AGENDA NO.: 8

OWNERS: Mark T. and Kathleen Y. Draper
APPLICANT: Nextel South Corporation

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Schreiner's objection was that he felt there are other sites in the area on which the tower could be located.

When Ms. Gray asked about the elevation precluding the tower being located in other areas, Ms. Greiner said there are other parcels in the area that could be explored.

CASE NO.: BOA#3-06-5

AGENDA NO.: 9

OWNER: Quality Team Development
APPLICANT: Michael Azzizzi

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial of the requested variance but approval with conditions to allow four to five buildable lots if the lots are consistent with the Comprehensive Plan. She showed the aerial from the staff report on the monitor. She submitted a wetlands map as County Exhibit A and a flood map as County Exhibit B. In response to Carl Ludecke, Ms. Greiner said all of the roads on which the lots front are publicly maintained, but only one road is paved. She submitted a map showing the location of the subject property as County Exhibit C. She noted that one letter of opposition was received, and she submitted that letter and a map (County Exhibit D) on which the property owned by the letter writer is highlighted.

In response to Henry Wolsmann, Carl Ludecke said the well must be at least 25 feet from the house and 75 feet from any septic tank. Neither a well nor a septic tank can be located in a wetlands. Ms. Greiner commented that none of the lots are in the wetlands. Some of the lots are in flood zones. She added that Wilma Avenue and Corrine Avenue are paved. Maryland and Carolina Streets are not paved. All four roads are County maintained.

Donald Schreiner was informed by Ms. Greiner that staff's recommendation of approval for four or five lots would be consistent with the Comprehensive Plan, and this Board would have the authority to grant that variance.

When Ruth Gray asked about the Rural future land use designation for this area, Ms. Greiner explained that the Comprehensive Plan is being rewritten and some future land use designations may be changing.

When Darren Eslinger asked if the applicant was aware that this Board cannot grant the requested variance, Ms. Greiner said Mr. Azzizzi was told that at the zoning counter when he dropped off the application. Mr. Eslinger confirmed that Mr. Azzizzi wanted to proceed after being told of the Board's authority.

Michael Azzizzi was present to represent the case. He felt a variance for five lots was fair. He had noticed that most of the lots in the general area are 100 feet by 100 feet so he requested the ten lots. Ms. Greiner stated that she had said four to five lots to ensure that each lot is at least one-half acre. Mr. Schreiner said that if a motion for approval is made, a condition should be added stating that each lot must meet the minimum requirement of 21,780 square feet and a portion of each lot, as platted, must be outside the floodplain area. Ms. Greiner agreed that none of the created lots can be wholly within the flood zone or it would not be consistent with the Comprehensive Plan. Mr. Azzizzi said it appears that he should be able to separate the land so none of the lots are wholly within the flood zone. Ms. Greiner agreed. She said that Mr. Azzizzi has several different options that he can follow when aggregating the lots. Staff will utilize the FEMA map unless a Letter of Map Revision or Letter of Map Amendment is applied for and accepted.

In response to Mr. Eslinger, Ms. Greiner said that if this variance is approved, the next step would be for Mr. Azzizzi to go to the Customer Services Division to get Unity of Titles. She added that the roads just recently became County maintained.

When Mary Link Bennett asked if there was any limitation on the size of the structures on the lots, Ms. Greiner replied that all structures must meet the impervious surface ratio requirement.

MOTION by Carl Ludecke, SECONDED by Mary Link Bennett to approve a variance in BOA#3-06-5 to allow up to five lots with each lot having at least one-half net acre of usable land and not being wholly in the flood zone.

BOARD OF ADJUSTMENT

JANUARY 12, 2006

CASE NO.: BOA#3-06-5

AGENDA NO.: 9

OWNER: Quality Team Development
APPLICANT: Michael Azzizzi

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FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

CASE N O.:**BOA#9-06-5****AGENDA NO.:****10****OWNER/APPLICANT:****Michael Azzizzi**

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial from the staff report on the monitor and noted that two letters of opposition had been received. She submitted those two letters of opposition and a map showing the location of the properties of the writers of the two letters highlighted in red as County Exhibit A.

Michael Azzizzi was present to represent the case. He said that when he purchased this piece of property, he purchased it as four separate lots with four separate closings. The homes in the area have been there for a long time, and he questioned whether this request would have much of an effect on the area. He asked if it would be possible to have two lots instead of four. The homes in this neighborhood are basically on 100-foot by 100-foot lots. He felt it would be unfair to deny this request and questioned whether there would be an impact on the environment. He thought there would probably be city water in the area in the near future. At that time, Ms. Greiner said Mr. Azzizzi could come back and ask for a variance.

Chairman Schreiner stated that this Board does not have the authority to go against the Comprehensive Plan.

In response to Carl Ludecke, Ms. Greiner said the requirement for a well is 21,780 square feet. Mr. Azzizzi said his entire acreage seems to be such a huge lot for one house.

MOTION by Carl Ludecke, SECONDED by Mary Link Bennett to deny the variance request in BOA#9-06-5.

FOR:**Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke****AGAINST:****None****MOTION CARRIED: 7-0**

CASE NO.:

BOA#6-06-25

AGENDA NO.: 13

OWNERS/APPLICANTS:

Knut J. and Renita I. Kjenslie

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with the condition that no further splits be allowed through the family or minor lot split process. She showed the aerial from the staff report on the monitor and noted that this property is located in the Green Swamp Area of Critical State Concern. The easement, Cloud Street, would provide access to the three residences that are being requested as well as five parcels for which they received a variance years ago.

Ruth Gray said she had requested this be removed from the consent agenda because there was no layout plan submitted. Ms. Greiner submitted a map showing the location of the subject property as County Exhibit A. In response to Ms. Gray, Ms. Greiner said there is no layout plan yet as the owners have not yet decided how they are going to divide the property into three parcels. Originally they were going to do a minor lot split, but it has been determined that there are other ways for them to accomplish what they want to do; and a minor lot split is not necessary. Therefore, now there is only one variance request, as noted in the staff report.

Knut Kjenslie said they bought this property in 1988, and the airport was added in 1989. They have maintained South Fork Ranch Drive for 16 years. After maintaining it alone for ten years, they decided to pave it. Others use the road. They are requesting this variance so they can provide land for their children. Since they have been there for a long time, they know what is wet and what is dry. The ten-acre meadow is a dry meadow. The wetlands go into the woods somewhat. Ms. Greiner submitted a wetlands map as County Exhibit B. The whole airport is about 80 acres; the airport will stay intact with the existing runway and the way it is already laid out. Ms. Greiner showed an aerial of the area (County Exhibit C) on the monitor.

Al Korim Juiraj said he owns three parcels totaling 20 acres almost adjacent to the subject property. On South Fork Ranch Drive, he owns five acres. He also owns another five-acre parcel and a ten-acre parcel. He submitted a map printout as Opposition Exhibit A. He noted that his property is shown in yellow. He bought his property 2-1/2 years ago. He said a doctor built a house or extension on Cloud Street; and ever since that happened, some of his property has been wetter. He did not have as much of a water problem during the three hurricanes as he does now, and the problem is getting worse. He was concerned how this variance request and the newly created lots will affect his property. He spoke of the water damage caused when a truck broke a pipe during construction. He was concerned about drainage problems from additional construction. He is having problems renting his property because it is so wet and has it on the market for sale.

Carl Ludecke stated that this area of the County is not very high, and there are a lot of wetlands.

Ms. Gray pointed out that this request would only create three lots and three houses. In response to Donald Schreiner, Ms. Greiner said the Land Development Regulations (LDRs) require that storm water runoff must remain on the property. Mr. Schreiner suggested Mr. Juiraj contact an engineer about his drainage problem.

Mr. Kjenslie said Mr. Juiraj bought his property a year ago. He pointed out the part of Mr. Juiraj's property that is all wetlands.

MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve the variance request in BOA#6-06-2 with the condition that there can be no further administrative lots splits.

FOR:

Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST:

None

MOTION CARRIED: 7-0

CASE NO.:

BOA#8-06-3

AGENDA NO.:

15

OWNERS/APPLICANTS:

Geoffrey and Vickie Ball

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial from the staff report on the monitor. She submitted a wetlands map as County Exhibit A and a flood map as County Exhibit B. She submitted another map (County Exhibit C) showing the distance from the property to the Lake Apopka Basin shoreline and a plot plan for the proposed one-story commercial building as County Exhibit D.

Carl Ludecke confirmed with Ms. Greiner that the water plant is zoned Planned Commercial. Ms. Greiner said it was approved to allow bulk water; however, it was approved before the current Code was adopted. When Ruth Gray asked about the existing building on the site, Ms. Greiner said there is a single-family dwelling unit on the parcel. Donald Schreiner noted that the staff report states that the dwelling unit will be torn down.

In response to Ms. Gray, Ms. Greiner said this property would go before the Zoning Board to request a zoning change to Planned Commercial with C-1 and C-2 uses if this variance is granted. However, the Lake County Code does not allow anything within one-half mile of the Lake Apopka shoreline except for single-family dwelling units. The applicants are requesting a variance to allow commercial zoning within that one-half mile distance. In Chapter 6 of the Lake County Land Development Regulations (LDRs), which addresses the Lake Apopka Basin, Ms. Greiner said it does not really give this Board the authority to grant a variance from residential to commercial. In addition, Mr. Schreiner said this is not going to meet the zoning criteria. Ms. Greiner agreed that the Planning staff told her that this property is not within commercial location criteria so even if this Board did grant the variance, she doubted if staff would be able to recommend approval for a zoning change.

Vickie Ball was present to represent the case. She stated that about a year ago she spoke to County senior planners about zoning this property to commercial. At that time, there was no problem. Since Bella Collina has come in and the Ginn Company has become interested in the property, attorneys have contacted the County Attorneys and had him change their ruling or the way they saw what Ms. Greiner was talking about on the one-half mile back. Commercial property and the Woodlands Campground with restaurants, churches and other activities surround her property. Across the street is a water company. She submitted a newspaper article from the Lake section of the Orlando Sentinel dated August 31, 2003 as Applicant Exhibit A. Neither she nor other property owners were noticed when this water company opened. The water company has two trucks operating 24 hours a day, seven days a week. She felt they are stealing from the aquifer. In 2003 she received a letter from St. Johns River Water Management District; they allowed the water company to double their outtake and double their production. Her driveway is across from the water company's driveway, and the lights from the trucks point directly into her home. CR 455 has dangerous curves on it, and many accidents have taken place. Her family owns seven acres in the area. She submitted a zoning map as Applicant Exhibit B.

At the request of Ms. Gray, Ms. Greiner pointed out the land north, south, and west of the subject property that are zoned R-1. On Opposition Exhibit B, Ms. Ball said the parcel in orange is the parcel where she lives. She confirmed that the one-story family residence on the subject property will be removed, and she will not be living there anymore. Ms. Gray was informed by Ms. Ball that she bought the property 35 years ago, before the water company was built across the road.

Ms. Ball said that when she came back to the County six months after her initial contact a year ago with a County senior planner, John Kruse, she was told that there was a change by the County in the way staff is to look at this land. She added that the water company is between her property and the lake.

Ms. Greiner reiterated that the rule that states that only single-family dwelling units can be placed within one-half mile of the shoreline of Lake Apopka went into effect in 2002. In 1990, the bottling company was approved.

CASE NO.: BOA#8-06-3 **AGENDA NO.:** 15
OWNERS/APPLICANTS: Geoffrey and Vickie Ball **PAGE NO.:** 2

Ms. Ball said she has copies of the e-mails from Bella Collina's attorney to the County Attorney directing the County to "relook at the way they were interpreting that and to interpret it so no more commercial could be built within a half a mile." Ms. Ball said this changed. The County has not been doing it that way. She was shocked to learn that County staff was denying the variance request. She had not been told that staff was going to recommend denial. A year ago staff would not have considered denying this request.

At the request of Mr. Schreiner, Ms. Greiner explained that Ms. Ball is requesting a variance to allow her to have commercial property within one-half mile of the Lake Apopka shoreline. Her property is 934 feet from the Lake Apopka shoreline. In the Code it does not say directly that they have the ability to rezone from residential to commercial. Ms. Greiner said she was not aware of any e-mail between attorneys. Ms. Ball said she was provided copies of the e-mails by John Kruse.

Mr. Ludecke asked Kevin McBride, Assistant County Attorney, if there was any discussion to either eliminate, modify, or adjust this particular regulation of one-half mile. Mr. McBride said this particular ordinance has been in effect since 2002, and it specifically states, "As of the effective date of this section, only single-family residential units may be developed within one-half mile of the lake shoreline."

Ms. Ball said she would be leaving all the trees on the property. There is already a commercial structure closer to Lake Apopka than what she is requesting. She wants to open an anti-aging clinic on her property. She will have no signage on the road.

In response to Mr. Schreiner, Ms. Greiner said Ms. Ball must get a variance before she can request a rezoning. In 2002 when this part of the LDRs was written, the intent was to restore Lake Apopka's shoreline and protect that area. In 1990 when the bottling company was approved, the County was not as sensitive to those needs as it is now. As time progresses and the County realizes that it needs to stop that kind of activity in that area, new rules must be adopted to stop the activities that cause these detriments.

Ms. Ball submitted a drawing of her proposed plans as Applicant Exhibit C. In addition to the clinic, she hopes to have a real estate office on the property, but she will do her real estate business online. The proposed buildings will be hidden by the trees.

Ms. Greiner informed Ms. Gray that if this property was rezoned for C-1 and C-2 uses, that would allow all the uses in those categories.

Mr. Ludecke confirmed with Mr. Schreiner that this type of clinic and a real estate office would be State-licensed facilities. When Mr. Ludecke asked if these facilities could be considered professional offices, Ms. Greiner said that would still be commercial. Only single-family dwelling units are permitted within one-half mile of the lake. Ms. Ball reiterated that she is surrounded by commercial, and there is commercial between her property and the lake. Ms. Greiner said that was allowed prior to the 2002 ordinance. She referred to Section 6.15.03A.1 and B.1 on Page 3 and 4 of the staff report.

In response to Ms. Ball, Ms. Greiner said the intent of the Code as well as proving a hardship are necessary to meet the criteria for a variance.

At the request of Ms. Greiner, Mr. McBride explained that nothing new could be developed within one-half mile of the lake shoreline unless it is a residential unit.

Ms. Ball said she would not have spent \$1,600 on this proceeding if she did not feel she had a chance of winning. Things have changed in the last six months. She did not appreciate that, and she felt this should be taken under advisement and attorneys should be notified. She will be pursuing this. She said she can provide the Board with the e-mails that Mr. Kruse provided her that made the changes.

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Since Ms. Ball is so adamant, Ms. Gray questioned whether she could ask Ms. Ball if she wanted to get some papers together and come back at another time so the Board could determine if the County misled her. Ms. Ball said she was told two different things.

Ms. Schreiner said coming back next month would not change that regulation. This Board does not have the authority to change a regulation.

MOTION by Ruth Gray to approve the variance request in BOA#8-06-3.

Ms. Gray asked if there was some way of imposing a limitation on the kind of commercial put on Ms. Ball's property if she should go before the Lake County Zoning Board and Board of County Commissioners (BCC). If so, she would like to add that to her motion, such as putting a limitation on making it light commercial. Mr. Ludecke said that cannot be done.

MOTION DIED for lack of a second.

MOTION by Carl Ludecke, SECONDED by Henry Wolsmann to deny the variance request in BOA#8-06-3.

FOR: **Fox, Eslinger, Wolsmann, Bennett, Schreiner, Ludecke**

AGAINST: **Gray**

MOTION CARRIED: 6-1

CASE NO.: BOA#10-06-1

AGENDA NO.: 16

OWNERS: James and Cindy L. Keller
APPLICANT: James R. Keller

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial from the staff report on the monitor. She submitted a flood map (County Exhibit A) and a wetlands map (County Exhibit B), noting that the property is not within the flood zone or the wetland area. She also submitted a map (County Exhibit C) showing the location of the property, a plat (County Exhibit D), and a flood zone map (County Exhibit E) and showed them all on the monitor.

When Carl Ludecke asked about the development pattern on Grove Street, Ms. Greiner referred to County Exhibit B, noting that the red crosses represent houses. However, regardless of the development pattern, this request would still be inconsistent with the Comprehensive Plan.

James Keller was present to represent the case. He said he owns the two lots and a nearby house. The property is zoned R-6, which allows lots of 7,260 square feet. All the houses in the area sit on the same size lots. For his lots to be combined and have one house on two lots, that house would stand out in the subdivision. When he bought the lots, he was told the lots were two buildable lots. Last year he was approached by a gentleman who wanted to buy the lots. At that time the gentleman checked on the lots and was told it would be no problem. The gentlemen signed the contract; but when he submitted the paperwork, a problem was discovered. In response to Mary Link Bennett, Mr. Keller said he paid off the lots in August 2003. He bought the lots from Mr. Busk on June 24, 1996. The lots are on a County-maintained road.

Chairman Schreiner left the meeting, and Henry Wolsmann took over as Vice Chairman.

When Ruth Gray asked whether the purchase took place in 1996 or 2002, Ms. Greiner said the deeds provided to her show that date. Kevin McBride, Assistant County Attorney, stated that the sale does not take place until the deed is actually executed.

Mr. Keller added that all the surrounding properties are zoned R-6, which requires lots to be at least 7,260 square feet; his lots are over 8,000 square feet. Ms. Greiner stated that the future land use category is Urban Expansion, which is what it was at that time. However, it must be taken into consideration that this property was not developed to meet the lot of record requirements or the variance to the aggregation requirement. Therefore, it must meet the four criteria listed in the staff report, one of which is the 10,890 square foot requirement.

In response to Mr. Wolsmann, Ms. Greiner said there were no letters of opposition received for this case, but she showed a petition with signatures on the monitor and submitted it as County Exhibit F. Mr. Keller said he had visited his neighbors and obtained those signatures. He felt that if the neighbors did not have a problem with these two houses, "why should the County." Ms. Greiner said the petition does not indicate the purpose of the variance. Darren Eslinger said this Board can assume what the variance is for based on who made the list.

Chairman Schreiner came back to the meeting.

MOTION by Carl Ludecke, SECONDED by Mary Link Bennett to deny the variance request in BOA#10-06-1.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

CASE NO.:

BOA#11-06-3

AGENDA NO.:

17

OWNER/APPLICANT:

Exclusive Homes, Inc.

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She showed the aerial from the staff report on the monitor. She pointed out that the owner had the opportunity to come to the zoning counter to determine if these lots were individual sites at which time it would have been explained that the lots would have to be aggregated together to be one buildable site. She submitted a flood map (County Exhibit A) showing that the lots are not fully contained within the flood zone and a wetlands map (County Exhibit B) showing that the lots are not within the wetlands. She submitted a zoning map as County Exhibit C and showed it on the monitor, noting that the property is zoned RP and does not connect to the canal. She submitted a site plan (County Exhibit D) provided by the owner and a letter from Aqua Utilities Florida (County Exhibit E) in which it states that potable water service is available to this property. She submitted and showed on the monitor a map (County Exhibit F). She pointed out the location of the subject property.

Donald Schreiner commented that Ms. Greiner appears to be in agreement with the five-foot setback between the two lots. However, he asked what would happen if a fence would be built between the two lots. Ms. Greiner said that could happen in any situation. All the other residential lots for single-family dwelling units have setbacks of five feet from the property lines. If a fence is erected and emergency vehicles must get through, that section of fencing would have to be removed. Carl Ludecke said the emergency vehicles could go to the outside of the building where the setback is ten feet.

Ms. Greiner said many letters of opposition have been received. Thirty-four households have sent letters. She submitted the 34 letters of opposition and a map with the subject property highlighted in yellow and the properties of the letter writers outlined in red as County Exhibit G. She also submitted additional letters of opposition with another map further to the west (County Exhibit H) showing the properties of those letter writers. Ms. Greiner stated that a recent letter from Exclusive Homes was placed at each member's chair. In this letter, it explains how Exclusive Homes plans to develop this property. She submitted this letter as County Exhibit I.

Douglas Laman, President, Exclusive Homes, Inc., spoke of the quadruplex on the adjacent property, Lot 14. It is a rental property, there is not adequate parking, and it is an eyesore for the entire subdivision. The subject property is zoned to allow duplex units. It is not his intent to build rental units or duplexes of equal size units. His intent is to build a larger single-family home, which would front the road, with a mother-in-law apartment behind the larger home. The apartment would be no larger than one-half the size of the living area of the main dwelling unit. This size requirement could be a condition of the variance request. This property is sandwiched between C-1 zoning on one side and the quadruplex on the other side. Because of these adjacent properties, he felt the subject property needs something unique in order to market it properly. The whole subdivision has five-foot side setbacks. This subject RP-zoned property requires ten-foot setbacks. These two lots are the only lots in the subdivision that require ten-foot setbacks. Since more than one family may live there, he will entertain the idea of four offsite parking spaces being required instead of two. He would also be willing to erect signs regulating the parking.

Mary Link Bennett stated that some of the letters of opposition alluded to the present water system being overtaxed. Mr. Laman said he does not operate the system, but his cousin lives on Lisa or Lois Drive and does not have a problem with his water. Although there would be people living in two different residences on each lot, he did not feel that necessarily meant that more water would be used than if all the people lived in one house.

When Mr. Schreiner asked how many vacant lots were left in the subdivision, Ms. Greiner said she did not know; but she could say the subdivision appears to be substantially built out. There are very few vacant lots. She put the letter from Aqua Utilities back on the screen. Mr. Laman said he has already built some houses in this subdivision.

Rebecca Davidson, property owner in the front part of the neighborhood, sixth house on the left on Lois

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Drive. Their house is on the canal. The proposed variance is very close to the canal. Her objection to the variance is that she feels that the current codes and regulations that were adopted should be followed. Two duplexes on the lots would not have a positive impact on the neighborhood. They already have serious problems at the front of the neighborhood with cars parked in yards, trailers full of construction trash and many complaints to Code Enforcement. She did not want to see the lots developed as two separate lots, and the five-foot setback request was also a concern for her and her neighbors. Parking is also an issue; they do not want a parking lot in the front of their neighborhood. It would have a negative effect on the canal. The additional traffic would be a problem. Overall, the residents of the area feel this would have a negative impact on their community. Although it is not Mr. Laman's intent for this to be a rental property, this may happen if the property is sold. There could be a potential for four families on a property that should only accommodate one duplex.

Mr. Ludecke felt that RP zoning is a good transition between C-1 commercial and the residential community. Ms. Davidson said the C-1 zoned property is vacant at this time. Mr. Ludecke said this request meets all the criteria necessary for a variance. Anyone in the subdivision could rent his or her house. Ms. Davidson said it has become a problem because it is in the front of the property.

Beth Ann Gause, who lives in the fifth house on the right on Lois Drive, felt the Board should deny this request because the application is ambiguous. She did not know how this Board could make a decision on aggregation without knowing whether a single-family residence or duplex will be built. For this Board to make a decision without knowing the true intent is irresponsible. She also just received a letter from Exclusive Homes like everyone else did. That letter itself speaks of a different intent. The public did not have notice of that intent. The public reviewed the application on file. Now the position has been significantly changed from the submitted application. For those reasons alone, she felt the request should be denied. She was not aware of any properties in the neighborhood with a single-family home and mother-in-law quarters in the back. That would be more density in a smaller area. She was also concerned about the offsite parking. She felt putting two septic tanks in an area where one septic tank should be would be an eyesore especially since a mound system would be needed. The property needs to abide by the current rule of ten feet to prevent future setback variance requests. If Mr. Laman follows the proposed plan, there will be four separate buildings. She added that there is a major water pressure problem in the front. She asked the Board to deny this request.

Ms. Greiner explained that two individual structures would not be allowed on each parcel. Each parcel could have no more than one building with space for two individual families.

When Darren Eslinger asked what uses are permitted in RP zoning, Ms. Greiner replied that the following uses are allowed in RP zoning: single-family dwelling unit, bed and breakfast, duplex, loft, aviary, medical services, personal care services, and self-service laundry. Ms. Gause commented that these uses would be on one parcel rather than jamming two structures together as Mr. Laman is proposing.

Mr. Eslinger asked how Mr. Laman's plans would change if this property was used for single-family residences rather than duplexes. Mr. Laman said there would be very little difference. A mother-in-law apartment would allow people to live completely on their own with their own facilities in this apartment. However, there would be a house next door if they needed assistance. In the design he has envisioned, it would not be possible to determine that this was a duplex by driving by the structure. It would look like a larger single-family home. He understood that the house and apartment could not be detached. There would be a firewall, and both units would be under the same roof. The property has plenty of depth. The residential driveway will be either 16 or 24 feet wide. He felt that if someone did rent this unit, that person would probably live in the main home and rent the apartment so that would allow for an onsite landlord with better control of the tenant.

Mr. Ludecke suggested a three-car garage in the front and a one-bedroom apartment in order to limit the

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number of people and keep vehicles inside instead of on the street. He also suggested one front door for the larger home and a walkway to a side entrance for the apartment. He felt that might be acceptable to the neighborhood and accomplish what the applicant wants.

Mr. Laman said he would not want a requirement of a three-car garage in the front because he has limitations on the amount of green space he must have for the septic systems. He also did not want to limit the apartment to one bedroom because as people age, they sleep in separate bedrooms.

Mr. Ludecke felt it may be best to put the septic tanks in the back because of the distance there. Mr. Laman said a mound system would not be necessary. He added that the site plans he submitted were drawn prior to knowing that a variance was necessary. The structure will be larger than that shown on the site plan, but it will be within the setbacks required under this zoning.

In response to Mr. Eslinger, Mr. Laman said he felt there is a tremendous need for mother-in-law apartments. Adding a duplex or a single-family home with an attached mother-in-law apartment would be the least offensive, least intrusive, and the least intense of the uses in RP zoning district that Ms. Greiner named earlier. This property is zoned RP to provide a buffer between the C-1 zoning and the single-family residences in the back.

Laura Hargrove, who lives in the fifth house on the right on Lois Drive, submitted covenants and restrictions as Opposition Exhibit A. According to that document, Section 1, a laundry would not be permitted in this subdivision. The lots in discussion are Lots 10 and 12. She acknowledged that a duplex could be built on these lots, but it was made for only one duplex. She did not have a problem with one duplex; she did have a problem with two duplexes. She felt the County created the aggregation rule for a reason. The average lot size in this subdivision is 75 feet by 100 feet. The subject lots are 50 feet wide. Mr. Ludecke noted that her lot is 100 feet deep whereas the subject property is 225 feet deep. It will be nearly impossible to create parking for two duplexes on a 50-foot lot with the septic tanks in the front. Based on the requirements for septic tank setbacks, the septic tanks cannot be placed in the back. Mr. Ludecke said there is room in the back for the septic tanks. There are septic tanks in the subdivision that are closer to the canal than what Mr. Laman has proposed. Ms. Hargrove said today's rules must be followed. She lives five lots from the subject property. She had to install a 400 square foot drain field mound system.

If the applicant did not have to abide by the aggregation rule, Mr. Eslinger asked if Ms. Hargrove would be opposed to two single-family homes. Ms. Hargrove said she would. The lot was aggregated for a reason. It is to have one building. Mr. Eslinger confirmed with Ms. Hargrove that she is opposed to the number of buildings rather than the number of families. However, Ms. Hargrove said the number of families does play into it in regard to the water problem. The way that the driveway and septic tank are proposed, to meet the setback from the septic tank, the driveway would be approximately ten feet wide. She questioned how vehicles from two families would fit in this driveway. Cars will park on the roadway to avoid parking on the septic tank.

Dee Puffer said they have lived in this subdivision for nine months. Their house is eight or nine houses from the front of the subdivision on Lois Drive. Duplexes at the front of a subdivision are ugly. She suggested someone check the FEMA flood zones. They closed on their property in April of 2005. They were not able to close because they did not have flood insurance. Their survey said nothing about flood. They were told that due to the hurricanes of last years, the maps were changed. Ms. Puffer added that if there are two duplexes, there will a lot of concrete for the parking plus the mounds. There is a drainage problem where she lives. The subject property may also have a drainage problem because of all the concrete. She was concerned about the damage the school buses will do to the roads. There is no place for a school bus to turn around. The school bus would have to go through the entire subdivision.

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Ms. Greiner showed County Exhibit A on the monitor, noting that depending on exactly where Ms. Puffer lives, the flood map does show a flood zone in that area. When Henry Wolsmann asked if school buses come into the subdivision now, Ms. Puffer said she only sees one school bus a day. However, if there are children of various ages in the subdivision, there could be three school buses.

John Stum, who lives in the seventh house on the left on Lois Drive, said he has not seen a case made by the applicant for any kind of hardship or unfairness. He did not see the urgency to deviate from this rule. There has been no expressed urgency on the part of the builder. Although the Code may allow five-foot setbacks throughout the neighborhood, that is not what has been built in Venetian Village. A five-foot setback would be the exception rather than the rule. He added that the quadruplex at the front of the subdivision was built prior to the adoption of the aggregation rule. This rule would prevent a situation such as the quadruplex from happening again. Venetian Village is a community of over 200 residences. There is one road accessing these 200 homes. They are represented by an active community association that extends over to Deer Island and the Shirley Shores area. As far as fairness, he felt the majority rules.

Jim Gill, property owner of Lots 160 and 162 in Venetian Village, submitted deed restrictions as Opposition Exhibit B. At the request of Mr. Gill, Mr. Schreiner read the first sentence of Section 2 into the record. Mr. Schreiner stated that deed restrictions are enforceable through civil court. Mr. Gill commented that Mr. Laman had said earlier that the owner would live in the front and be a landlord for the people in the back. He questioned whether it would work out that way. He noted that in the covenants and restrictions, it states that servants' quarters are permitted. He said there are a lot of people in this community trying to make this a better place. The person who owns the C-1 zoned property on Lisa Drive has no plans to develop that property as commercial.

Since the deed restrictions state that only single-family dwelling units are permitted in the subdivision, Mr. Eslinger asked if the neighborhood has chosen not to pursue the fact that a quadruplex is already in the subdivision. Ms. Greiner said the deed restrictions state that "All lots, except those designated as commercial lots on the Plat of Record, are to be used solely for residential purpose; single detached dwelling only." RP zoning allows commercial uses. The County defines it as commercial.

Mr. Ludecke stated that the fact that the quadruplex is there negates any enforcement of that deed restriction claim. Ms. Gray said it would depend on the dates. According to Opposition Exhibit B, Ms. Greiner said the document begins: NOTICE OF RESTRICTIONS TO ALL PURCHASERS OF LOTS IN SECOND ADDITION TO VENETIAN VILLAGE".

Ms. Greiner stated that the Assistant County Attorney pointed out to her that in the Lake County Land Development Regulations (LDRs), the RP zoning district is considered residential. Therefore, Mr. Schreiner said the community may have a private right of action. Enforcing deed restrictions is a civil matter.

Ms. Puffer suggested the applicant find another piece of property to develop in the way that is proposed.

Mr. Laman said he has been accused of waffling. He said he submitted an application to build two duplexes. He has not deviated from that original request. He has offered some means by which this Board could approve the request and add some restrictions so these duplexes would not be the typical duplexes. He has done topographical surveys on this property, and there is not one square inch of this property that lies less than 18 inches above the 100-year flood plain of the entire Lake Harris Chain of Lakes. If these two lots had been under different ownership in 1992 or 1993, two duplexes could have been built. He reiterated that this Board could place restrictions on this variance request, such as the size of the duplex or additional off-street parking. He will be limited to the total number of bedrooms by the septic tank regulations.

JANUARY 12, 2006

MOTION by Darren Eslinger, SECONDED by Mary Link Bennett to deny the variance request in BOA#11-06-3.

MOTION CARRIED: 4-3

Adjournment

There being no further business, the meeting was adjourned at 5:00 p.m.

Respectfully submitted,

Sherie Ross
Public Hearing Coordinator

Donald Schreiner
Chairman